HANNA OIL & GAS CO.

IBLA 95-204 Decided December 18, 1997

Appeal from a Decision of the New Mexico State Office, Bureau of Land Management, upholding an assessment of $5,000 for failure to obtain approval prior to drilling a well on Choctaw and Chickasaw Tribal oil and gas lease (Indian Lease No. 69398). SDR 95-04.

Affirmed in part, set aside in part and remanded.

1. Oil and Gas Leases: Civil Assessments and Penalties--
Oil and Gas Leases: Incidents of Noncompliance

Drilling an oil or gas well on a Federal or Indian lease without an approved application for permit to drill is a violation of the operating regulations at 43 C.F.R. § 3162.3-1(c), and under 43 C.F.R. § 3163.1(b)(2), the regulation governing incidents of noncompliance, an assessment of $500 per day that such violation exists (not to exceed $5,000) is mandated. However, the State Director should on remand consider whether the amount of the penalty should be compromised or reduced under authority of 43 C.F.R. § 3163.1(e).

APPEARANCES: Richard L. Harris, Esq., Tulsa, Oklahoma, for Appellant; Margaret Miller Brown, Esq., Office of the Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Hanna Oil and Gas Company (Hanna) has appealed the December 12, 1994, Decision of the New Mexico State Office, Bureau of Land Management (BLM), upholding an assessment of $5,000 in damages for failure to obtain approval before drilling the Indian lease No. 69398, Harmon No. 1 well, in Haskell County, Oklahoma. 1/

1/ The Decision was issued over the signature of the Acting Deputy State Director, Resource Planning, Use, and Protection.

On October 27, 1994, BLM's Tulsa District Office (TDO) issued the assessment, stating that the subject well was spudded on September 26, 1994, without prior BLM approval, as required by 43 C.F.R. § 3162.3- 1(c). 2/ The TDO noted that Hanna's application for permit to drill (APD) had been received on May 26, 1994, but was not returned approved until October 5, 1994.

Hanna sought review of the assessment by the New Mexico State Director pursuant to 43 C.F.R. § 3165.3. On December 12, 1994, the Decision presently under appeal was issued (SDR 95-04), wherein the underlying facts were set out and the assessment summarily affirmed.

Hanna's APD was received by TDO on May 26, 1994. By letter of May 26, 1994, TDO acknowledged receipt of the APD, noting that BLM would proceed "with a detailed geologic and engineering review and processing on a first in-first out priority basis." The TDO's letter cautioned that BLM's 35-day time frame for completion of an APD could be "interrupted" if it was necessary to prepare an environmental assessment or an environmental impact statement.

The following sequence of events is set out in a Chronological Review of Contacts Between Hanna Oil & Gas Company and BLM, submitted by Hanna along with its request for State Director review. On June 20, 1994, Hanna contacted TDO for a status report on its APD. The TDO asked Hanna to call back 2 weeks later for an update. On July 5, 1994, BLM's Oklahoma City Resource Area Office (ORA) informed Hanna that its APD had been received and directed it to call back in a week to 10 days for an onsite inspection schedule. During an onsite inspection on August 10, 1994, Hanna's representative emphasized to BLM that Hanna required approval of the permit "at least two weeks prior to October 1, 1994, in order to avoid expiration of farmouts and various trade agreements pertaining to the oil and gas leases." According to Hanna, a BLM official advised at the meeting that the permit had yet to pass through several stages, that some people were sick and others on vacation, and that BLM was behind schedule in its processing of APD's. The BLM official indicated that "he would push for the Permit to move along, and stated that they should be able to approve the Permit timely." Between August 11 and September 19, 1994, Hanna made several telephone calls to BLM emphasizing "the critical element of the economic time frame of October 1, 1994." On September 19, ORA advised Hanna that the APD would be mailed to TDO by September 23, 1994. On September 27, 1994, Hanna learned that the APD had not yet been mailed from ORA to TDO. On that day, Hanna

> made the economic decision to commence the well since there was an offset well to the Southeast which was producing in good

---

2/ The TDO also noted that the well was drilled to a depth of 6,292 feet and completed in the Simpson formation at 6,192 to 6,215 feet, on Oct. 18, 1994, and that the lease is included in Communitization Agreement No. SCRI-S-86.

> quantities and the chances were great that Hanna would not be able to renew or extend farmouts or pooling orders, as issued by the Oklahoma Corporation Commission, if they did not comply with the economic deadline of October 1.

These events, as stated by Hanna, are summarized in the State Office Decision and are not disputed by BLM. The State Office Decision explains that ORA was provided a copy of the APD package to begin processing on June 20, 1994. The Decision further explains that, although engineering and geologic aspects of APD's are processed by TDO, surface compliance, environmental aspects, and consultation with other surface management agencies or interested parties, are processed by ORA. The BLM acknowledged that ORA informed Hanna on August 10, 1994, that the APD "should be approved in time for Hanna to meet its agreements," and that, on September 19, 1994, ORA contacted Hanna to inform it that "the APD would be mailed to the TDO by September 23, 1994, for signature." In fact, the "environmental assessment aspects of the APD" were not mailed to TDO until September 28, 1994, and the APD was not approved and mailed to Hanna until October 5, 1994. On October 19, 1994, Hanna informed TDO that the well had been spudded on September 27, 1994, prior to approval of the APD, and the assessment ensued.

The BLM's Answer further explains that letters requesting Native American Tribal clearance of possible impacts to sensitive or sacred sites were sent to the Chickasaw-Choctaw Office, Bureau of Indian Affairs, and the Choctaw Tribal Office, on August 22 and 26, 1994, respectively. Thirty days elapsed before BLM received replies to these letters. The BLM further explained:

> On several occasions Hanna was informed by the ORA that no further correspondence was needed and the APD was being processed as rapidly as work load and available personnel allowed. During verbal communication between Hanna and the ORA on September 19, 1994, Hanna concluded that the APD was "approved" and would be mailed to the TDO no later than September 23, 1994. The ORA may have used the word "approved" which was incorrect. At that point, it had only been determined that the proposed action was "environmentally acceptable." Hanna made one further inquiry to the ORA on September 27, 1994. The EA was still in final processing and the APD was not yet approved.

On appeal, Hanna does not deny that it drilled without an approved APD. Hanna states that, because of BLM's delay, it was confronted with the following options: (1) drilling based on "the verbal comment of the Oklahoma City Office that the APD had been approved and was on its way through the Tulsa Office," or (2) awaiting approval and thereby losing trade agreements and farmout rights. (Statement of Reasons at 4.) Hanna notes that BLM had more than three times its stated turnaround time of 35 days within which to process and approve the APD, and that, despite repeated urgings by Hanna, BLM failed to complete approval prior to the

economic deadline faced by Hanna. Hanna asserts that it suffered adverse economic effects because of BLM's delay in approving the APD and that for these reasons the penalty assessment is unjust.

[1] The requirement for submitting to the authorized officer of BLM and obtaining approval of an APD prior to commencement of drilling operations is unequivocal. 43 C.F.R. § 3162.3-1(c). The remedies for noncompliance with this requirement are set forth as follows:

> (b) Certain instances of noncompliance are violations of such a serious nature as to warrant the imposition of immediate assessments upon discovery. Upon discovery the following violations shall result in immediate assessments, which may be retroactive, in the following specified amounts per violation:
>
> * * * * * * *
>
> (2) For drilling without approval * * *, $500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed $5,000.

43 C.F.R. § 3163.1(b); Northland Royalty Operating Co., 129 IBLA 164, 165 (1994). That regulation reflects the Department's policy that drilling without approval, or causing surface disturbance preliminary to drilling without approval, constitutes an instance of serious noncompliance, warranting the imposition of immediate assessments upon discovery. Jack Corman, 119 IBLA 289, 293 (1991); Jack Hammer, 114 IBLA 340, 343 (1990); Magness Petroleum Corp., 113 IBLA 214, 216 (1990); Noel Reynolds, 110 IBLA 74, 76 (1989). In the preamble to the rulemaking, BLM explained that prior approval "is critical to proper multiple use management of the public lands." 52 Fed. Reg. 5384, 5388 (Feb. 20, 1987). There is no doubt that there was a violation of this regulation in this case.

A regulation having some relevance to this case is 43 C.F.R. § 3162.3-1(d), which mandates that the APD process be initiated "at least 30 days before commencement of operations is desired," and which requires that an application be "administratively and technically complete" prior to approval of an APD. Although this regulation indicates that at least 30 days should be allowed for processing an APD, it contains no requirement that the processing be completed by a date certain. Still, Hanna could reasonably have believed that it had filed its APD amply in advance of its deadline to avoid an expiration of farmout and other agreements pertaining to the lease. The BLM has pointed to no material time delays as a result of archeological or environmental review or onsite inspections of the drill site that compelled delaying approval beyond October 1, 1994.

The regulations provide the State Director authority, on a case-by-case basis, to compromise or reduce assessments for noncompliance.

43 C.F.R. § 3163.1(e). Our decision in no way suggests that the regulation was not violated in this case. The only issue requiring review by BLM is whether the relief provisions of 43 C.F.R. § 3163.1(e) apply here. We have not prejudged that question. Any decision imposing an assessment will be subject to appeal to this Board. Compare, V. Irene Wallace, 122 IBLA 349, 356 (1992) (Administrative Judge Hughes Concurring).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed with respect to the determination of violation, but the penalty is set aside pending review pursuant to 43 C.F.R. § 3163.1(e), and the case is remanded for such review.

_____
David L. Hughes
Administrative Judge

We concur:

_____
Will A. Irwin
Administrative Judge

_____
James P. Terry
Administrative Judge